

**United States Department of Labor
Employees' Compensation Appeals Board**

R.S., Appellant

and

**DEPARTMENT OF JUSTICE, BUREAU OF
PRISONS, Marion, IL, Employer**

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Docket No. 15-575

Issued: April 22, 2015

Appearances:

Alan J. Shapiro, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge

COLLEEN DUFFY KIKO, Judge

JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 16, 2015 appellant, through counsel, filed a timely appeal from an October 22, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained neck strain, migraines, and numbness of the arms and hands causally related to factors of her federal employment.

FACTUAL HISTORY

On November 7, 2013 appellant, then a 40-year-old case manager, filed an occupational disease claim alleging neck strain and stiffness, migraines, numbness in her arms and hands, and loss of motion causally related to factors of her federal employment. She described the work

¹ 5 U.S.C. § 8101 *et seq.*

factors to which she attributed her condition, including typing, working on a computer, lifting heavy files, bending over to file, and combat training. Appellant did not stop work.

By letter dated December 5, 2013, OWCP requested that appellant provide additional factual and medical information, including a detailed report from her attending physician addressing the causal relationship between any diagnosed condition and her employment. It further advised her that a chiropractor was considered a physician under FECA only to the extent that he or she diagnosed a subluxation by x-ray.

In a decision dated February 5, 2014, OWCP denied appellant's claim on the grounds that she did not establish an employment-related condition. It accepted the identified work factors but found that appellant had failed to submit any supporting medical evidence.

On March 5, 2014 appellant, through counsel, requested a telephone hearing.

On September 11, 2014 appellant submitted chiropractic reports dated June 8 through November 19, 2013. In an initial evaluation dated June 8, 2013, Dr. Angela Baxter, a chiropractor, discussed her complaints of discomfort in the lumbosacral spine, left and right cervical spine, and upper thoracic spine. She interpreted x-rays as showing reduced lumbar lordosis, reversed cervical lordosis, disc space narrowing at T12 to L2, a superior right ilium, cervical spondylosis, and facet arthropathy. Dr. Baxter diagnosed lumbar fusion, lumbar spondylosis, cervical spondylosis, and idiopathic scoliosis by x-ray. Following examination, she diagnosed lumbar intervertebral disc displacement without myelopathy, cervical spondylosis without myelopathy, postural kyphosis, lumbalgia, cervicalgia, tension headaches, unspecified myalgia, and myositis, pelvic segmental dysfunction, sacroillitis, deconditioning syndrome, unequal leg length, sacral segmental dysfunction, and thoracic segmental dysfunction.

In chiropractic reports dated June 20 through November 14 2013, Dr. Baxter described her treatment of appellant and provided the same diagnoses. In a report dated October 7, 2013, she related that a magnetic resonance imaging (MRI) scan study of the cervical spine revealed a disc bulge at C6-7, a disc protrusion compressing the left foot at C7, an annular bulge with spinal narrowing at C4-5, disc protrusions at C3-4 and T1-2, and foraminal stenosis at C6-7.

In an undated report received by OWCP on September 11, 2014, Dr. Baxter advised that appellant had "frequent exacerbation[s]" of her neck and back pain as a result of her employment. The chiropractor reviewed her work duties and noted that stress with a coworker aggravated her "neck pain and myospasm. It appears as though her occupation is contributing to and aggravating her spinal conditions."

Appellant also received treatment from Dr. Ronald D. Smith, a chiropractor. In a report dated May 20, 2013, Dr. Smith indicated that she had "[m]ultiple subluxations with spasm, hypomobility and point tenderness" at C1 on the left, C2 on the right, T1 on the left, and T8 and T7. He diagnosed lumbar intervertebral disc displacement without myelopathy, cervical spondylosis without myelopathy, postural kyphosis, lumbalgia, cervicalgia, tension headaches, unspecified myalgia, and myositis, pelvic segmental dysfunction, sacroillitis, deconditioning syndrome, unequal leg length, sacral segmental dysfunction, and thoracic segmental dysfunction. Dr. Smith provided similar reports dated May 28 through November 19, 2013 indicating that appellant had multiple subluxations at various spinal locations and providing the same diagnoses.

By decision dated October 22, 2014, the hearing representative affirmed the February 5, 2014 decision. She found that the chiropractic reports were of no probative value as the chiropractor did not diagnosis a subluxation by x-ray.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an “employee of the United States” within the meaning of FECA, that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;⁵ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁶ and (3) medical evidence establishing the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁷

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁸ must be one of reasonable medical certainty⁹ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁰

Section 8101(2) of FECA provides that the “term ‘physician’ includes chiropractors only to the extent that their reimbursable services are limited “to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist....”¹¹ A

² 5 U.S.C. § 8101 *et seq.*

³ *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *See Ellen L. Noble*, 55 ECAB 530 (2004).

⁵ *Michael R. Shaffer*, 55 ECAB 386 (2004).

⁶ *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

⁷ *Beverly A. Spencer*, 55 ECAB 501 (2004).

⁸ *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

⁹ *John W. Montoya*, 54 ECAB 306 (2003).

¹⁰ *Judy C. Rogers*, 54 ECAB 693 (2003).

¹¹ 5 U.S.C. § 8101(2); *see also Michelle Salazar*, 54 ECAB 523 (2003).

chiropractor cannot be considered a physician under FECA unless it is established that there is a subluxation as demonstrated by x-ray evidence.¹² OWCP's regulations at 20 C.F.R. § 10.5(bb) define subluxation as an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrable on any x-ray film to an individual trained in the reading of x-rays.¹³

ANALYSIS

Appellant alleged that she experienced neck stiffness and strain, migraine headaches, numbness of the arms and hands, and reduced motion as a result of her work duties. OWCP accepted the occurrence of the claimed employment factors. The issue, therefore, is whether the medical evidence establishes a causal relationship between the claimed conditions and the identified employment factors.

Appellant submitted chart notes dated June 8 through November 19, 2013 from Dr. Baxter, a chiropractor. On June 8, 2013 Dr. Baxter found that x-rays showed reduced lumbar lordosis, a reversed cervical lordosis, T1 to L2 disc space narrowing, cervical spondylosis, and idiopathic scoliosis. In progress reports dated June through November 19, 2013, Dr. Baxter diagnosed lumbar intervertebral disc displacement without myelopathy, cervical spondylosis without myelopathy, postural kyphosis, lumbalgia, cervicalgia, tension headaches, unspecified myalgia and myositis, pelvic segmental dysfunction, sacroillitis, deconditioning syndrome, unequal leg length, sacral segmental dysfunction, and thoracic segmental dysfunction. On October 7, 2013 Dr. Baxter opined that an MRI scan study showed a disc bulge at C6-7, a disc protrusion compressing the left root at C7, an annular bulge with spinal narrowing at C4-5, disc protrusion at C3-4 and T1-2, and foraminal stenosis at C6-7. In an undated report received by OWCP on September 11, 2014, she found that appellant sustained exacerbations of neck and back pain as a result of her work duties. As discussed, however, section 8101(2) of FECA provides that the term 'physician' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.¹⁴ A chiropractor cannot be considered a physician under FECA unless it is established that there is a subluxation as shown by x-ray evidence.¹⁵ Dr. Baxter did not diagnose a subluxation by x-ray; therefore, she is not considered a physician under FECA and her reports are of no probative value.¹⁶

In reports dated March 20 through November 19, 2013, Dr. Smith, a chiropractor, advised that appellant had multiple subluxations at various levels of the cervical and thoracic spine. He diagnosed lumbar intervertebral disc displacement without myelopathy, cervical spondylosis without myelopathy, postural kyphosis, lumbalgia, cervicalgia, tension headaches, unspecified myalgia and myositis, pelvic segmental dysfunction, sacroiliitis, deconditioning

¹² See *Mary A. Ceglia*, 55 ECAB 626 (2004).

¹³ 20 C.F.R. § 10.5(bb).

¹⁴ 5 U.S.C. § 8101(2); see also *I.C.*, Docket No. 14-1927 (issued February 13, 2015).

¹⁵ *Supra* note 13; see *supra* note 12.

¹⁶ See *Isabelle Mitchell*, 55 ECAB 623 (2004).

syndrome, unequal leg length, sacral segmental dysfunction, and thoracic segmental dysfunction. While Dr. Smith noted that appellant had subluxations, he did not provide any indication that he reviewed any x-rays in reaching this determination. As his finding of a spinal subluxation was not based on an x-ray reading, he is not considered a physician under FECA.¹⁷

Appellant has not submitted any evidence from a physician finding that she sustained a diagnosed condition as a result of the identified work factors; consequently, she has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established that she sustained neck strain, migraines, and numbness of the arm and hand causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the October 22, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 22, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹⁷ See *K.D.*, Docket No. 11-16 (issued August 16, 2011).